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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 1222

DAVID H. ALSOP, et al.,
Petitioners

vs.

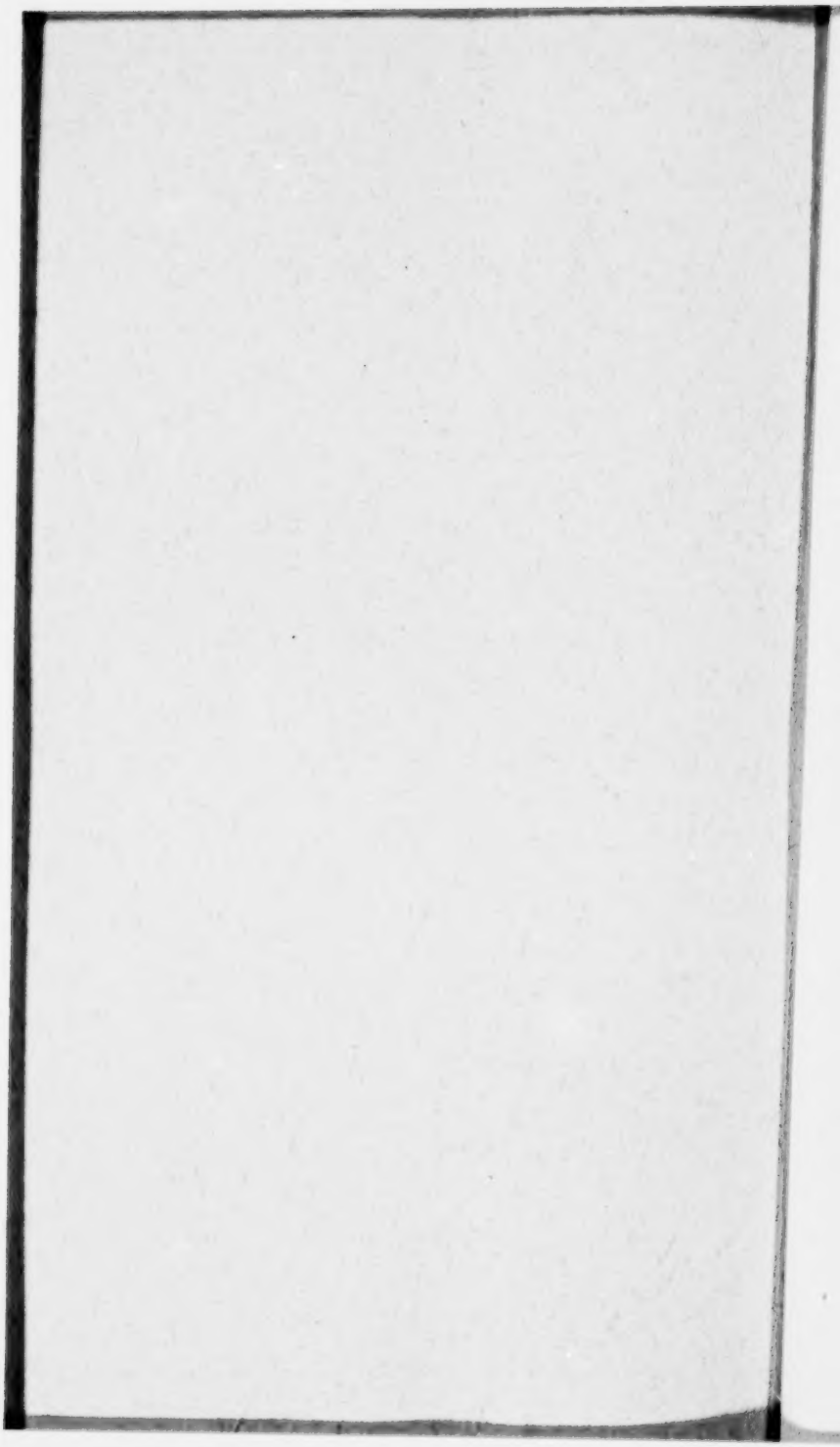
ROBERT AUGUST PASCUCCI, Infant
By DAVID A. HART, Guardian ad litem,
Respondent.

REPLY OF RESPONDENT TO THE PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

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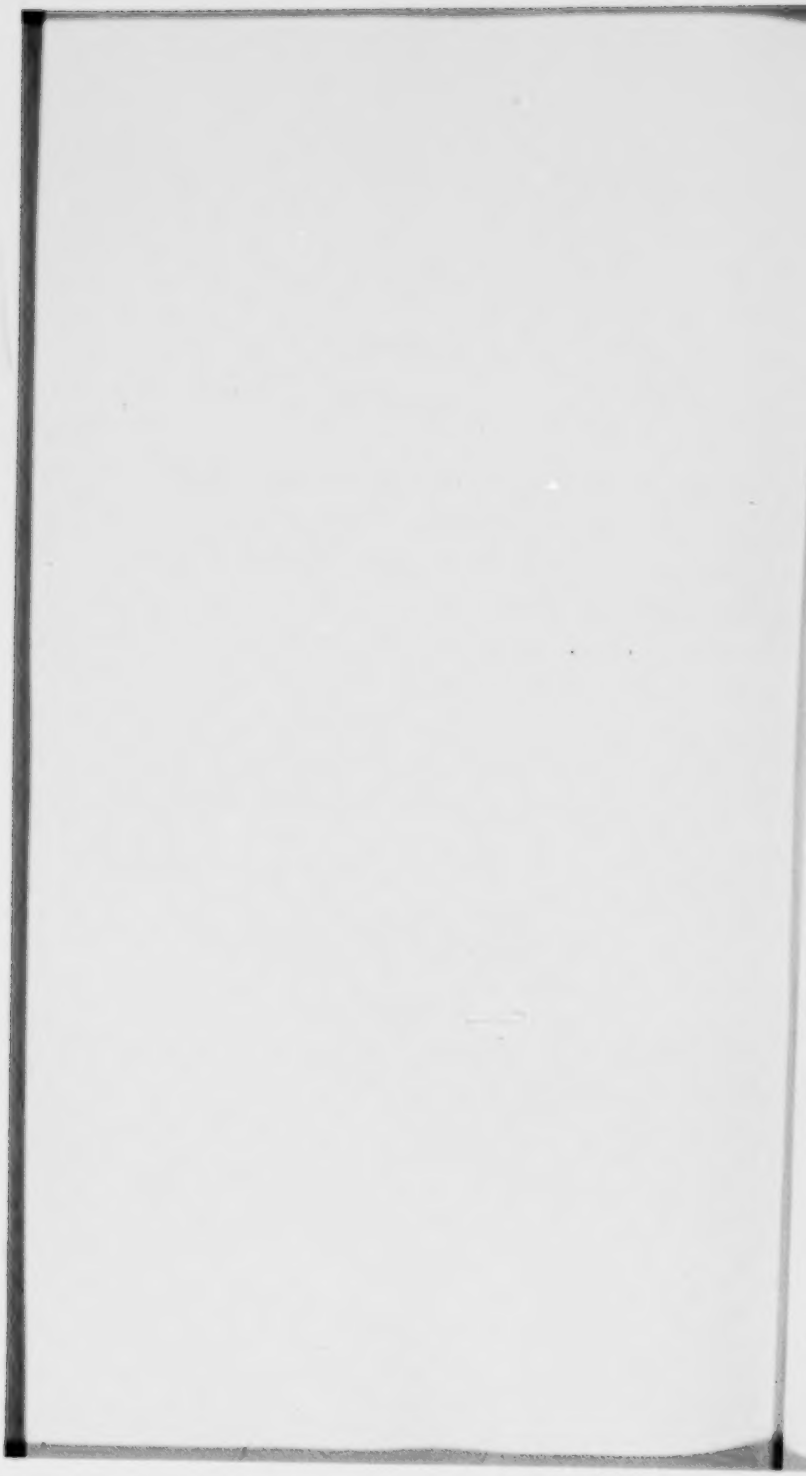
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In The

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October Term, 1944

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David H. Alsop, et al.,
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vs.

Robert August Pascucci, Infant
By David A. Hart, Guardian ad litem,
Respondent.

REPLY OF RESPONDENT TO THE PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI

Respondent opposes the issuance of a writ of certiorari because, in his view, the case does not fall within Rule 38 of this Court.

Moreover, the case involves the consideration of a statute, not national in scope but confined in its operation to the District of Columbia. Therefore the case of Del Vecchio v. Bowers, 296 U.S. 280, is pertinent. There, at p. 285, it was said:

> "In the view that the case does not fall within Rule 38, the respondent opposed the issuance of a writ of certiorari. The objection might be valid if the statute were confined in its operation to the District of Columbia. We will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited or which declare the common law of the District. The Longshoremen's and Harbor Workers' Compensation Act, however, is national in

> scope, and a decision with respect to its enforcement constitutes a precedent of general application. We therefore granted the writ because of the important question as to the effect of Section 20(d)."

Petitioners do not attempt, by authorities, to demonstrate that the decision of the United States Court of Appeals for the District of Columbia, in the instant case, is unsound in law; their contention is that the Court of Appeals was bound by the stare decisis rule to follow its earlier ruling, regarding the same statute, in the case of Morris v. Foster, 51 App. D.C. 238, 278 F. 321, certiorari denied, 259 U.S. 582. The same point was made and relied on by the petitioners in the United States Court of Appeals. There petitioners said:

> "The issue here has been decided in the negative in the case of Morris v. Foster, 51 App. D.C. 238, 278 F. 321, in which it was held that methods of revocation are limited to those expressly enumerated in the statute, and the question is stare decisis."

But the stare decisis rule is not inflexible.

In Hertz v. Woodman, 218 U.S. 205, the Court, at p. 212, said:

> "The Circuit Court of Appeals was obviously not bound to follow its own prior decision. The rule of stare decisis, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the Court, which is again called upon to consider a question once decided."

In Barden v. Northern Pacific RR. Co., 154 U.S. 288, it is said:

> "It is more important that the Court should be right upon later and more elaborate consideration of the cases than consistent with prior declarations."

See Burnet v. Coronado Oil & Gas Co., 285 U.S. 393; also Graves v. Schmidlapp, 315 U.S. 657, 665; Helvering v. Hallock, 309 U.S. 106, 119.

In McKenna v. Austin, 134 F. (2) 660, Mr. Justice Rutledge, in speaking of the stare decisis rule, said that it "should be laid to rest."

The Court of Appeals of New York, in discussing the stare decisis rule in Rumsey et al., v. The New York and New England RR. Co., 133 N.Y. 79, 85, said:

> "It is no doubt true that even a single adjudication of this Court, upon a question properly before it, is not to be questioned or disregarded except for the most cogent reasons, and then only in a case where it is plain that the judgment was the result of a mistaken view of the condition of the law applicable to the question. But the doctrine of stare decisis, like almost every other legal rule, is not without its exceptions. It does not apply to a case where it can be shown that the law has been misunderstood or misapplied, or where the former determination is evidently contrary to reason. The authorities are abundant to show that in such cases it is the duty of the Courts to re-examine the question."

In United States v. State of Minnesota, 113 F. (2) 770, 774, the Circuit Court of Appeals said:

> "We are not unmindful of the doctrine of stare decisis, but recognize that it is entitled to great weight and should ordinarily be adhered to, unless the reasons therefor no longer exist, are clearly erroneous, or manifestly wrong. The strong respect for precedent which inheres in our legal system has its qualifications and limitations. It does not call for a blind, arbitrary and implicit following of precedent, but recognizes, no vested rights nor rule of property being involved, that it is more important as to far reaching judicial principles that the Court should be right than that it merely be in harmony with its previous decisions. Such a respect for precedent balks at the perpetuation of error and the doctrine of stare decisis is, after all, subordinate

to legal reason and is properly departed from if and when such departure is necessary to avoid the perpetuation of error."

The Morris v. Foster case did not declare any rule by which the right of property should be determined. The Morris case preserved the rights of three children against the claims of their stepfather, while the instant case protects the inheritance of a single child against the claim of the executors.

The term "rule of property" means "those rules governing the descent, transfer or sale of property, and the rules which affect the title and possession thereto." Bucher v. Cheshire RR. Co., 125 U.S. 555, 583.

Compare 25 C.J., p. 839 and p. 852.

In the light of all that has now been said, we do not perceive upon what basis of reason it can be said that the Court of Appeals should perpetuate error where clearly found to exist.

Respectfully submitted,

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